APPEAL NO. 040059
FILED FEBRUARY 23, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on October 29, 2003. The hearing officer determined that the respondent's (claimant) compensable injury extends to and includes major depression. The appellant (carrier) appeals this determination and asserts that the hearing officer erred in allowing the testimony of Dr. W. The claimant urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

On appeal the carrier asserts that the hearing officer erred in allowing the testimony of Dr. W. The evidence reflects that at the hearing the claimant offered Claimant's Exhibit No. 4 and the carrier objected to the exhibit on the basis that it had not been timely exchanged. The ombudsman assisting the claimant represented that the exhibit had been exchanged at the benefit review conference. The hearing officer explained that he found the ombudsman's representation credible and admitted the report. The carrier then objected to the testimony of Dr. W on the grounds that he had not been timely identified as a witness. The hearing officer noted that regardless of the timely identification of Dr. W as a witness, the carrier was in possession of his report and, therefore, could not claim surprise. The hearing officer found good cause for allowing the testimony of Dr. W.

In order to obtain a reversal for the admission of evidence, the carrier must demonstrate that the evidence was actually erroneously admitted and that "the error was reasonably calculated to cause and probably did cause rendition of an improper judgment." Hernandez v. Hernandez, 611 S.W.2d 732, 737 (Tex. Civ. App.-San Antonio 1981, no writ). Any error in the admission of the testimony of Dr. W does not rise to the level of reversible error, as Dr. W's testimony was largely cumulative of the information contained in his report and there is no indication that the hearing officer's decision was based exclusively on the testimony of Dr. W, as opposed to his report. Accordingly, we cannot agree that the admission of his testimony constituted reversible error.

The disputed issue in this case involved a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer

obviously was not persuaded by the carrier's evidence purporting to establish that the claimant had a "preexisting psychological condition" and rendered a decision favorable to the claimant. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

LC
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Edward Vilano
Appeals Judge